

13-04-2022
Subha
Item no.
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 2969 of 2017

In the matter of : **Dr. Neela Bhattacharya @ Bhattacharjee**
.....petitioner.

Mr. Shibaji Kumar Das
Ms. Rupsa Srimani
...for the petitioner.

Mr. Sudip Ghosh
Mr. Bitasok Banerjee
....for the State.

The present revisional application has been preferred challenging the proceedings arising out of Bhaktinagar P. S. Case No. 142 of 2010 dated 17.02.2010, wherein the police authorities after completion of investigation submitted chargesheet under Section 304 of the Indian Penal Code against the petitioner who happens to be a medical practitioner.

The allegations in the F.I.R were that one Bapi Paul, resident of Rabindranagar Colony of the district of Jalpaiguri got his sister, Susmita Pal(deceased) admitted at Anandaloke Hospital & Neuro Science Centre, 2nd Mile, Sevoke Road, Bhaktinagar, Jalpaiguri for treatment. It has been contended that few days prior to her admission in the said hospital, the informant's sister suffered burn injury at the forehead and at the neck and was treated at the local hospital and thereafter she was taken to Bangalore (at present Bengaluru) for plastic surgery. The deceased recovered but there was continuous bleeding from her forehead and for the said treatment she

was admitted in the aforesaid hospital under the petitioner. From 1st February, 2010 to 15th February, 2010 she was under continuous treatment of the petitioner. However, there was no improvement and it was advised for skin grafting. However, the deceased was discharged from the aforesaid hospital as it was stated that the deceased was cured. All of a sudden on 17th February, 2010 at about 11.30 A.M the complainant was informed that his sister has expired. The complainant as such apprehends that because of negligence of the doctor his sister died and as such investigation should be conducted.

The Investigating Officer registered the F.I.R and on completion of investigation, chargesheet was submitted under Section 304 of the Indian Penal Code against the present petitioner.

I have scanned the case diary as also the chargesheet and I find that the Investigating Authority in order to prove its case has relied upon five witnesses which include four police officers and the complainant. The chargesheet also do not reflect that any document was collected in course of the investigation of the said case. Neither the statement of any other witness was recorded in course of investigation, nor any opinion was sought for from any Medical Board prior to registration of the F.I.R.

The post mortem report which was collected contains the remark as follows :-

“Opinion kept reserved pending as to cause of death till the receipt of Histopathological Examination Report”.

No Histopathological Examination report was available in the

case diary and more than 12 years have passed since then. On an assessment of the allegations made by the complainant and the materials collected by the Investigating Officer of the case, I am of the view that the initiation and registration of the First Information Report was in ignorance of the dictum of the Hon'ble Supreme Court in the case of *Jacob Mathew -vs- State of Punjab & Anr.*, reported in (2005) 6 SCC 1. A Special Bench of the Hon'ble Supreme Court was pleased to lay down the guidelines for the steps to be taken by the police authorities in respect of complaint received from individuals for the purposes of registration of F.I.R in respect of medical practitioners. Paragraph 52 of the said Judgement reads as follows:-

52. “Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The Investigating Officer should, before proceeding against the doctor accused of rash or negligent act or

omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld”.

On an appreciation of the materials collected by the Investigating Agency as well as the fact that no opinion was obtained from any Medical Board prior to registration of the F.I.R as also the fact that the Histopathological Examination Report which could have been the foundation of the opinion of the post-mortem doctor was not made available before the court, I am of the considered view that further continuance of the proceedings so far as the present petitioner is concerned, who happens to be a medical practitioner, is an abuse of the process of the court and, as such the proceedings arising out from the Bhaktinagar P. S. Case No. 142 of 2010 dated 17th February, 2010 including the chargesheet filed therein and the orders so passed are hereby quashed.

Thus, the present revisional application being CRR 2969 of 2017 is allowed.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby made absolute.

The original case diary be returned to Mr. Sudip Ghosh, learned advocate appearing on behalf of the State.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]